IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2805 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHWARIBEN THAKORBHAI THAKWANI

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 2805 of 2001

MS KALPANA CHAUDHARI for MR NK MAJMUDAR for Petitioner No. 1-2

MR PRANAV G DESAI for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/04/2002

ORAL JUDGEMENT

Rule. Mr Pranav G Desai waives service of Rule for respondents. The matter is taken up for final hearing today.

Thakordas Rupchand Thakwani, husband of

petitioner No.1 and father of petitioner No.2 was earlier granted licence to keep four lorries opposite Pratap Talkies in the city of Baroda. He was allowed to keep the lorries in a place earmarked for keeping such lorries opposite Pratap talkies since 1966. After the death of Thakordas Thakwani on 16-1-1985, Haresh Thakordas Thakwani son of Thakordas Thakwani and petitioner No.1 and brother of petitioner No.2 herein got separated from the petitioners and he requested the Corporation to allot him the space for keeping his lorry. The authorities allowed him space to keep one lorry opposite Sursagar lake. Haresh Thakwani having separated from the petitioners did not permit the petitioners to take part in his business nor did the Corporation permit the petitioners to keep another lorry at that place. The petitioners had, therefore, filed Special Civil Application No.1082 of 1998, which came to be dismissed by the learned Single Judge. Aggrieved by the said order, the petitioners preferred Letters Patent Appeal No.337 of 1999 wherein the Division Bench passed the following order on 30-6-1999:-

"Having regard to the facts and circumstances of the case, the respondent - Corporation may consider the claim of the appellants and dispose of the application in accordance with law. If the original application is not available, the appellants are at liberty to submit a fresh application within a period of two weeks. The representation is to be disposed of within a reasonable time.

The Letters Patent Appeal stands disposed of accordingly."

2. The petitioners accordingly made subsequent applications. The petitioners thereafter sent reminder dated 2-8-1999/4-8-1999. The Corporation thereupon sent a communication dated 22-10-1999 (Annexure D) calling upon the petitioners to produce the documentary evidence in support of their claim. The petitioners complied with the said communicated by submitting their reply dated 28-10-1999 along with the copies of all the relevant documents in support of their claim. The said reply/application dated 28-10-1999 is at Annexure C t the petition. Since the matter remained pending with the Corporation for more than one year and the petitioners did not get any reply, the petitioners filed the present petition and notice was issued on 20-4-2001. It appears that the Corporation was not inclined to grant the petitioners' licence to keep the lorry at the original

place and, therefore, the following order was passed on 27-11-2001:-

"Mr Pranav G Desai, learned advocate on behalf of the respondent states that the petitioner has given a proposal for being relocated. Mr Desai seeks time to obtain instruction in the matter. S.O. to 11-12-2001."

Thereafter on 4-2-2002 again the following order was passed:-

"Mr Pranav G Desai learned counsel for the respondent prays and is granted two weeks' time to allot a cabin place on hawking zone. Put up this matter on 18-2-2002."

The matter was thereafter listed three times and today the matter has again come up. No affidavit in reply is filed nor is the learned advocate for the petitioner communicated any reply.

3. Ms. Kalpana Chaudhari, learned counsel for the petitioners prays that relief may be granted in terms of para-13 (a) and the respondent - Corporation be directed to allot space to the petitioners for keeping at least two lorries in the hawking zone as earmarked by the Corporation.

4. Having heard the learned counsel for the parties, the following order is passed:-

The respondent shall grant the hawking licence to the petitioners for one lorry in the hawking zone as earmarked by the Corporation, preferably in the old city area of Baroda around Sursagar lake or in the vicinity thereof.

This direction shall be complied with within two weeks from the date of receipt of writ of this Court.

5. The petition accordingly stands disposed of. Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

(M.S. Shah,J)

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